

Response to Restriction Requirement

The Examiner has required an election from among Group I, claims 1-51, Group II, claims 52-68, and Group II claim 78.

In order to fully comply with the Examiner's requirement, Applicants hereby elect Group I, claims 1-51.

Further, the Examiner has required Applicants to elect a specific polymorphism or combination of polymorphisms. Examiner further erroneously states that this second election is not an election of species.

The Examiner's basis for stating that the election put forth is not an election of species appears to be that separate, non-overlapping iterations of the claimed invention using different species and different combinations of species within the genus are possible.

The same could be said of nearly every list of species within a genus in a claim, and does not actually make the restriction NOT a species election.

The Examiner attempts to cite MPEP 806.05(j) in support of the assertion that restriction is appropriate, and this is NOT an election of species. According to this section of the MPEP, "(t)he related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants." (MPEP § 806.05(j)).

The inventions claimed, the iterations and combinations mentioned by the Examiner in her argument, are quite capable of being used together and do not have a materially different design, mode of operation, function, or effect. Thus, the different iterations proposed by the Examiner fall quite perfectly into the definition of an election of species. To make the assertion that this restriction is NOT an election of species is rather baffling.

Further, given that the several combinations have been generically claimed, for example, in claim 1, the Examiner's reliance on MPEP 806.05(d) is unavailing. While one can contrive subcombinations which may be used together, this does not actually make the restriction NOT an election of species.

In addition, the field of the search is the same, in direct contradiction of the Examiner's statement. The different species are simply different polymorphisms of the same gene, related to the same conditions and predispositions, and will typically be cited in publications from the same types of searches, if not actually in the same publications in many cases. The assertion that the different species require different fields of search is absurd.

The applicant sincerely requests that the Examiner review the requirements for an election of species and reconsider this specific restriction.

In order to fully comply with the second restriction, the Examiner's Election of Species, the Applicants elect the SNP FRZB_G19524A. If the elected species is found to be free of prior art, the Applicants retain the right to reintroduce further species for examination.

Extension of Time

Under 37 CFR §1.136(a), Applicants respectfully request a 4-month extension of time to respond to the Office Action mailed July 18, 2007. The response date was August 18, 2007; with the granting of this request, the response time is re-set to December 18, 2007. The commissioner is hereby authorized to charge the fee due under 37 CFR §1.17(a)(3), to Deposit Account No. 50-0812. Please grant any additional extensions of time that may be required to enter this amendment and charge any additional fees or credit any overpayments to Deposit Account No. 50-0812.

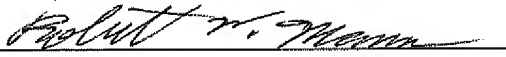
Conclusion

Applicants respectfully submit that this response to the restriction requirement is complete and responsive, and that the claims are in a condition for early consideration on the merits. In the event that a telephonic interview would be helpful, please contact the undersigned representative.

Please direct all future correspondences to: Customer No. 22829.

Respectfully submitted,

Date: December 18, 2007

By: 
Robert W. Mann
Reg. No. 48,555

Correspondence Address
Roche Molecular Systems, Inc.
1145 Atlantic Avenue
Alameda, California 94501
Tele: 510-814-2800
Fax: 510-814-2973